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13

14
15 **UNITED STATES DISTRICT COURT**
16 **NORTHERN DISTRICT OF CALIFORNIA**

17 **IN RE AXA WAGE AND HOUR**
18 **LITIGATION**

Case No.: C 06-04291 JSW

Hon. Jeffrey S. White

19 **STIPULATED ~~[Proposed]~~**
20 **PROTECTIVE ORDER**
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1 **1. PURPOSE AND LIMITATIONS**

2 Disclosure and discovery activity in this action are likely to involve production of
3 confidential, proprietary, or private information for which special protection from public
4 disclosure and from use for any purpose other than prosecuting this litigation would be
5 warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the
6 following Stipulated Protective Order. The parties acknowledge that this Order does not
7 confer blanket protections on all disclosures or responses to discovery, and that the
8 protection it affords extends only to the limited information or items that are entitled
9 under the applicable legal principles to treatment as confidential. The parties further
10 acknowledge, as set forth in Section 10 below, that this Stipulated Protective Order
11 creates no entitlement to file confidential information under seal; Civil Local Rule 79-5
12 sets forth the procedures that must be followed and reflects the standards that will be
13 applied when a party seeks permission from the Court to file material under seal.

14 **2. DEFINITIONS**

15 2.1 Party: any party to this action, including all of its officers, directors,
16 employees, consultants, retained experts, and outside counsel (and their support staff).

17 2.2 Disclosure or Discovery Material: all items or information,
18 regardless of the medium or manner generated, stored, or maintained (including, among
19 other things, testimony, transcripts, or tangible things) that are produced or generated in
20 disclosures or responses to discovery in this matter.

21 2.3 "Confidential" Information or Items: Information or items,
22 regardless of how generated, stored, or maintained (including, among other things,
23 testimony, transcripts, or tangible things), that qualify for protection under standards
24 developed under Fed. R.Civ. P. 26(c).

25 2.4 Receiving Party: a Party that receives Disclosure or Discovery
26 Material from a Producing Party.
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1 2.5 Producing Party: a Party or non-party that produces Disclosure or
2 Discovery Material from a Producing Party.

3 2.6 Designating Party: a Party or non-party that designates information
4 or items that it produces in disclosures or in responses to discovery as “Confidential.”

5 2.7 Protected Material: any Disclosure or Discovery Material that is
6 designated as “Confidential.”

7 2.8 Outside Counsel: attorneys who are not employees of a Party but
8 who are retained to represent or advise a Party in this action.

9 2.9 House Counsel: attorneys who are employees of a Party.

10 2.10 Counsel (without qualifier): Outside Counsel and House Counsel (as
11 well as their support staffs).

12 2.11 Expert: a person with specialized knowledge or experience in a
13 matter pertinent to the litigation who has been retained by a Party or its counsel to serve
14 as an expert witness or as a consultant in this action and who is not a past or current
15 employee of a Party or of a competitor of a Party’s and who, at the time of retention, is
16 not anticipated to become an employee of a Party or a competitor of a Party’s. This
17 definition includes a professional jury or trial consultant retained in connection with this
18 litigation.

19 2.12 Professional Vendors: persons or entities that provide litigation
20 support services (e.g., photocopying; videotaping; preparing exhibits or demonstrations;
21 organizing, storing, retrieving data in any form or medium; etc.) and their employees and
22 subcontractors.

23 **3. SCOPE**

24 The protections conferred by this Stipulation and Order cover not only Protected
25 Material (as defined above), but also any information copied or extracted therefrom, as
26 well as all copies, excerpts, summaries, or compilations thereof, plus testimony,
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1 conversations, or presentations by parties or counsel to or in court or in other settings that
2 might reveal Protected Material.

3 **4. DURATION**

4 Even after the termination of this litigation, the confidentiality obligations imposed
5 by this Order shall remain in effect until a Designating Party agrees otherwise in writing
6 or a court Order otherwise directs.

7 **5. DESIGNATING PROTECTED MATERIAL**

8 **5.1 Exercise of Restraint and Care in Designating Material for**
9 **Protection.** Each Party or non-party that designates information or items for protection
10 under this Order must take care to limit any such designation to specific material that
11 qualifies under the appropriate standards. A Designating Party must take care to
12 designate for protection only those parts of material, documents, items, or oral or written
13 communications that qualify – so that other portions of the material, documents, items, or
14 communications for which protection is not warranted are not swept unjustifiably within
15 the ambit of this Order.

16 If it comes to a Party's or a non-party's attention that information or items
17 that it designated for protection do not qualify for protection at all, the Party or non-party
18 must promptly notify all other parties that it is withdrawing the mistaken designation.

19 **5.2 Manner and Timing of Designations.** Except as otherwise provided
20 in this Order (*see*, e.g., second paragraph of section 5.2(a), below), or as otherwise
21 stipulated or ordered, material that qualifies for protection under this Order must be
22 clearly so designated before the material is disclosed or produced.

23 Designation in conformity with this Order requires:

24 (a) **for information in documentary form** (apart from transcripts
25 of depositions or other pretrial or trial proceedings), that the Producing Party affix the
26 legend "CONFIDENTIAL" on each page that contains protected material. If the
27 Producing Party would like to protect only a portion or portions of the material, the
28

1 Producing Party should clearly identify the protected portion(s) (e.g, by making
2 appropriate markings in the margins).

3 A Party or non-party that makes original documents or materials
4 available for inspection need not designate them for protection until after the inspecting
5 Party has indicated which material it would like copied and produced. During the
6 inspection and before the designation, all of the material made available for inspection
7 shall be deemed "CONFIDENTIAL." After the inspecting Party has identified the
8 documents it wants copied and produced, the Producing Party must determine which
9 document, or portions thereof, qualify for protection under this Order, and make the
10 appropriate designation as "CONFIDENTIAL" before producing the specified
11 documents.

12 (b) for testimony given in deposition or in other pretrial or trial
13 proceedings, that the Party or non-party offering or sponsoring the testimony identify on
14 the record, before the close of the deposition, hearing, or other proceeding, all protected
15 testimony. When it is impractical to identify separately each portion of testimony that is
16 entitled to protection, and when it appears that substantial portions of the testimony may
17 qualify for protection, the Party or non-party that sponsors, offers, or gives the testimony
18 may invoke on the record (before the deposition or proceeding is concluded) a right to
19 have up to 30 days to identify the specific portions of the testimony as to which protection
20 is sought. Only those portions of the testimony that are designated for protection within
21 the 30 days shall be covered by the provisions of this Stipulated Protective Order.

22 Transcript pages containing Protected Material must be separately
23 bound by the court reporter, who must affix to the top of each such page the legend
24 "CONFIDENTIAL," as instructed by the Party or non-party offering or sponsoring the
25 witness or presenting the testimony.
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1 c) for information produced in some form other than documentary,
2 and for any other tangible items, that the Producing Party affix in a prominent place on
3 the exterior of the container or containers in which the information or item is stored the
4 legend "CONFIDENTIAL." If only portions of the information or item warrant
5 protection, the Producing Party, to the extent practicable, shall identify the protected
6 portions as "Confidential."

7 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
8 failure to designate information or items as "Confidential" does not, standing alone,
9 waive the Designating Party's right to secure protection under this Order for such
10 material. If material is designated as "Confidential" after the material was initially
11 produced, the Receiving Party, on timely notification of the designation, must make
12 reasonable efforts to ensure that the material is treated in accordance with the provisions
13 of this Order.

14 In the event the Receiving Party receives such notice of a "Confidential"
15 designation three days or less before the Receiving Party includes the subject material in a
16 court filing, the Receiving Party shall not be sanctioned for any failure to follow sealing
17 procedures required by this Stipulated Protective Order.

18 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

19 6.1 Timing of Challenges. Unless a prompt challenge to a Designating
20 Party's confidentiality designation is necessary to avoid foreseeable substantial
21 unfairness, unnecessary economic burdens, or a later significant disruption or delay of the
22 litigation, a Party does not waive its right to a challenge a confidentiality designation by
23 electing not to mount a challenge promptly after the original designation is disclosed.

24 6.2 Meet and Confer. A Party that elects to initiate a challenge to a
25 Designation Party's confidentiality designation must do so in good faith and must begin
26 the process by conferring directly (in voice to voice dialogue; other forms of
27 communication are not sufficient) with counsel for the Designating Party. In conferring,
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1 the challenging Party must explain the basis for its belief that the confidentiality
2 designation was not proper and must give the Designating Party an opportunity to review
3 the designated material, to reconsider the circumstances, and, if no change in designation
4 is offered, to explain the basis for the chosen designation. A challenging Party may
5 proceed to the next stage of the challenge process only if it has engaged in this meet and
6 confer process first.

7 6.3 Judicial Intervention. A Party that elects to press a challenge
8 to a confidentiality designation after considering the justification offered by the
9 Designating Party may file and serve a motion under Civil Local Rule 7 (and in
10 compliance with Civil Local Rule 79-5, if applicable) that identifies the challenged
11 material and sets forth in detail the basis for the challenge. Each such motion must be
12 accompanied by a competent declaration that affirms that the movant has complied with
13 the meet and confer requirements imposed in the preceding paragraph and that sets forth
14 with specificity the justification for the confidentiality designation that was given by the
15 Designating Party in the meet and confer dialogue.

16 The burden of persuasion in any such challenge proceeding shall be
17 on the Designating Party. Until the Court rules on the challenge, all parties shall continue
18 to treat the material in question as confidential.

19 7. ACCESS TO AND USE OF PROTECTED MATERIAL

20 7.1 Basic Principles. A Receiving Party may use Protected Material that
21 is disclosed or produced by another Party or by a non-party in connection with this case
22 only for prosecuting, defending, or attempting to settle this litigation. Such Protected
23 Material may be disclosed only to the categories of persons and under the conditions
24 described in this Order. When the litigation has been terminated, a Receiving Party must
25 comply with the provisions of section 11, below (FINAL DISPOSITION).

1 Protected Material must be stored and maintained by a Receiving Party at a
2 location and in a secure manner that ensures that access is limited to the persons
3 authorized under this Order.

4 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
5 otherwise ordered by the Court or permitted in writing by the Designating Party, a
6 Receiving Party may disclose any information or item designated CONFIDENTIAL only
7 to:

8 (a) the Receiving Party's Outside Counsel of record in this
9 action, as well as employees of said Counsel to whom it is reasonably necessary to
10 disclose the information for this litigation;

11 (b) the officers, directors, and employees (including House
12 Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this
13 litigation;

14 (c) experts (as defined in this Order) of the Receiving Party to
15 whom disclosure is reasonably necessary for this litigation and who have signed the
16 "Agreement to Be Bound by Protective Order" (Exhibit A);

17 (d) the Court and its personnel;

18 (e) court reporters, their staffs, and professional vendors to whom
19 disclosure is reasonably necessary for this litigation;

20 (f) during their depositions, witnesses in the action to whom
21 disclosure is reasonably necessary and who have signed the "Agreement to Be Bound by
22 Protective Order" (Exhibit A). Pages of transcribed deposition testimony or exhibits to
23 depositions that reveal Protected Material must be separately bound by the court reporters
24 and may not be disclosed to anyone except as permitted under this Stipulated Protective
25 Order;

1 (g) translators of the information, and during deposition,
2 translators for witnesses testifying regarding the information, who have signed the
3 “Agreement to Be Bound by Protective Order” (Exhibit A); and/or

4 (h) the author of the document or the original source of the
5 information.

6 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
7 **PRODUCED IN OTHER LITIGATIONS**

8 If a Receiving Party is served with a subpoena or an order issued in other litigation
9 that would compel disclosure of any information or items designated in this action as
10 “CONFIDENTIAL,” the Receiving Party must so notify the Designating Party, in writing
11 (by fax, if possible), immediately and in no event more than three court days after
12 receiving the subpoena or order. Such notification must include a copy of the subpoena
13 or court order.

14 The Receiving Party also must immediately inform in writing the party in the other
15 litigation that caused the subpoena or order to be issued that some or all of the material
16 covered by the subpoena or order is the subject of a Protective Order. In addition, the
17 Receiving Party must deliver a copy of this Stipulated Protective Order promptly to the
18 party in the other action that caused the subpoena or order to issue.

19 The purpose of imposing these duties is to alert the interested parties to the
20 existence of this Protective Order and to afford the Designating Party in this case an
21 opportunity to try to protect its confidentiality interests in the court from which the
22 subpoena or order issued. The Designating Party shall bear the burdens and the expenses
23 of seeking protection in that court of its confidential material – and nothing in these
24 provisions should be construed as authorizing or encouraging a Receiving Party in this
25 action to disobey a lawful directive from another court.

1 **9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

2 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
3 Protected Material to any person or in any circumstance not authorized under this
4 Stipulated Protective Order, that Receiving Party must immediately (a) notify in writing
5 the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve
6 all copies of the Protected Material, (c) inform the person or persons to whom
7 unauthorized disclosures were made of all terms of this Order, and (d) request such
8 persons or persons to execute the “Acknowledgment and Agreement to Be Bound” that is
9 attached hereto as Exhibit A.

10 **10. FILING PROTECTED MATERIAL**

11 Without written permission from the Designating Party or a court order secured
12 after appropriate notice to all interested persons, a Party may not file in the public record
13 in this action any Protected Material. A Party that seeks to file under seal any Protected
14 Material must comply with Civil Local Rule 79-5.

15 **11. FINAL DISPOSITION**

16 Unless otherwise ordered or agreed in writing by the Producing Party, within sixty
17 days after the final termination of this action (including appellate review), each Receiving
18 Party must destroy, or return to the Producing Party, all Protected Material. As used in
19 this subdivision, “all Protected Material” includes all copies, abstracts, compilations,
20 summaries, or any other form of reproducing or recapturing any of the Protected Material.
21 Whether the Protected Material is returned or destroyed, the Receiving Party must submit
22 a written certification to the Producing Party (and, if not the same person or entity, to the
23 Designating Party) by the sixty-day deadline that identifies (by category, where
24 appropriate) all the Protected Material that was returned or destroyed and that affirms that
25 the Receiving party has not retained any copies, abstracts, compilations, summaries, or
26 other forms of reproducing or capturing any of the Protected Material. Notwithstanding
27 this provision, Counsel are entitled to retain an archival copy of all pleadings, motion
28

1 papers, transcripts, legal memoranda, correspondence, or attorney work product, even if
2 such material contains Protected Material. Any such archival copies that contain or
3 constitute Protected Material remain subject to this Protective Order as set forth in
4 Section 4 (DURATION), above.

5 **12. MISCELLANEOUS**

6 **12.1 Right to Further Relief.** Nothing in this Order abridges the right of
7 any person to seek its modification by the Court in the future.

8 **12.2 Right to Assert Other Objections.** By stipulating to the entry of this
9 Protective Order, no Party waives any right it otherwise would have to object to
10 disclosing or producing any information or item on any ground not addressed in this
11 Stipulated Protective Order. Similarly, no Party waives any right to object on any ground
12 to use in evidence of any of the material covered by this Protective Order.

13 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

14
15 Dated: February 14, 2008

KERR & WAGSTAFF LLP

16
17 By: 

18 Adrian J. Sawyer
Attorneys for Defendants

19 Dated: February _____, 2008

SCHIFFRIN BARROWAY TOPAZ
& KESSLER, LLP

20
21
22 By: _____

23 Gerald D. Wells, III
Co-Lead Counsel for Plaintiffs and
24 Counsel for Plaintiff Paul Meola

25 (signatures continued on next page)
26
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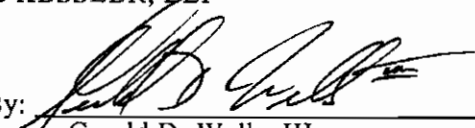
13 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

14
15 Dated: February ____, 2008 KERR & WAGSTAFFE LLP

16
17 By: _____
18 Adrian J. Sawyer
Attorneys for Defendants

19 Dated: February 29, 2008


20 SCHIFFRIN BARROWAY TOPAZ
& KESSLER, LLP

21
22 By: 
23 Gerald D. Wells, III
24 Co-Lead Counsel for Plaintiffs and
Counsel for Plaintiff Paul Meola

25 (signatures continued on next page)

1 Dated: February 29, 2008

COTCHETT, PITRE & McCARTHY

2
3 By: 
4 Niall P. McCarthy
5 Co-Lead Counsel and
6 Counsel for Plaintiff Harkant Dhruv

7
8 Dated: February ____, 2008

LAW OFFICES OF JOHN M. KELSON

9
10 By: _____
11 John M. Kelson
12 Counsel for Plaintiff Harkant Dhruv

13
14 Dated: February ____, 2008

CARLSON LYNCH LTD

15
16 By: _____
17 Gary F. Lynch
18 Counsel for Plaintiff Anthony Bolea

19
20 Dated: February ____, 2008

LIM, RUGER & KIM, LLP

21
22 By: _____
23 Bryan King Sheldon
24 Counsel for Plaintiff Paul Meola

25
26 Dated: February ____, 2008

INITIATIVE LEGAL GROUP LLP

27
28 By: _____
29 Joseph Cho
30 Counsel for Plaintiffs Carlton Lennon
31 and James Thompson

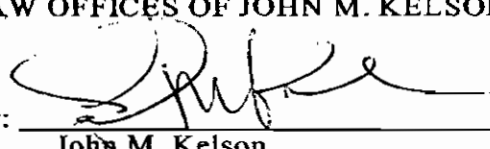
1 Dated: February ____, 2008

COTCHETT, PITRE & McCARTHY

2
3 By: _____
4 Niall P. McCarthy
5 Co-Lead Counsel and
6 Counsel for Plaintiff Harkant Dhruv

7 Dated: February 19, 2008

LAW OFFICES OF JOHN M. KELSON

8 By:  _____
9 John M. Kelson
10 Counsel for Plaintiff Harkant Dhruv

11 Dated: February ____, 2008

CARLSON LYNCH LTD

12 By: _____
13 Gary F. Lynch
14 Counsel for Plaintiff Anthony Bolea

15 Dated: February ____, 2008

LIM, RUGER & KIM, LLP

16 By: _____
17 Bryan King Sheldon
18 Counsel for Plaintiff Paul Meola

19 Dated: February ____, 2008

INITIATIVE LEGAL GROUP LLP

20 By: _____
21 Joseph Cho
22 Counsel for Plaintiffs Carlton Lennon
23 and James Thompson
24
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28

1 Dated: February ____, 2008

COTCHETT, PITRE & McCARTHY

2

3

By: _____

4

Niall P. McCarthy

Co-Lead Counsel and
Counsel for Plaintiff Harkant Dhruv

5

6 Dated: February ____, 2008

LAW OFFICES OF JOHN M. KELSON

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8

By: _____

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John M. Kelson

Counsel for Plaintiff Harkant Dhruv

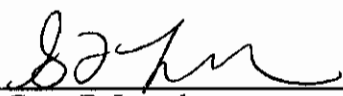
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Dated: February 29, 2008

CARLSON LYNCH LTD

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12

By:  _____

13

Gary F. Lynch

Counsel for Plaintiff Anthony Bolea

14

15 Dated: February ____, 2008

LIM, RUGER & KIM, LLP

16

17

By: _____

Bryan King Sheldon

Counsel for Plaintiff Paul Meola

18

19 Dated: February ____, 2008

INITIATIVE LEGAL GROUP LLP

20

21

By: _____

Joseph Cho

Counsel for Plaintiffs Carlton Lennon
and James Thompson

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1 Dated: February ____, 2008 COTCHETT, PITRE & McCARTHY
2
3 By: _____
4 Niall P. McCarthy
5 Co-Lead Counsel and
6 Counsel for Plaintiff Harkant Dhruv
7
8 Dated: February ____, 2008 LAW OFFICES OF JOHN M. KELSON
9
10 By: _____
11 John M. Kelson
12 Counsel for Plaintiff Harkant Dhruv
13
14 Dated: February ____, 2008 CARLSON LYNCH LTD
15
16 By: _____
17 Gary F. Lynch
18 Counsel for Plaintiff Anthony Bolea
19
20 Dated: February 27, 2008 LIM, RUGER & KIM, LLP
21
22 By: _____
23 Bryan King Sheldon
24 Counsel for Plaintiff Paul Meola
25
26 Dated: February ____, 2008 INITIATIVE LEGAL GROUP LLP
27
28 By: _____
29 Joseph Cho
30 Counsel for Plaintiffs Carlton Lennon
31 and James Thompson

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5 Co-Lead Counsel and
6 Counsel for Plaintiff Harkant Dhruv
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8 Dated: February ____, 2008 LAW OFFICES OF JOHN M. KELSON
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22 By: _____
23 Bryan King Sheldon
24 Counsel for Plaintiff Paul Mcola
25
26 Dated: February 14, 2008 INITIATIVE LEGAL GROUP LLP
27
28 By:  _____
Joseph Cho
Counsel for Plaintiffs Carlton Lennon
and James Thompson

ORDER

Pursuant to counsel's stipulation, IT IS SO ORDERED.

Dated: March 4, 2008


Hon. Jeffrey S. White
United States District Judge

1 EXHIBIT A

2
3 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

4
5 I, _____, [print or type full name], of _____
6 _____ [print or type full address], declare under penalty of perjury that I have read in
7 its entirety and understand the Stipulated Protective Order that was issued by the United
8 States District Court for the Northern District of California on [date] in the case IN RE
9 AXA WAGE AND HOUR LITIGATION, Case No. C 06-04291 JSW. I agree to comply
10 with and to be bound by all the terms of this Stipulated Protective Order and I understand
11 and acknowledge that failure to so comply could expose me to sanctions and punishment
12 in the nature of contempt. I solemnly promise that I will not disclose in any manner any
13 information or item that is subject to this Stipulated Protective Order to any person or
14 entity except in strict compliance with the provisions of this Order.

15 I further agree to submit to the jurisdiction of the United States District Court for
16 the Northern District of California for the purpose of enforcing the terms of this
17 Stipulated Protective Order, even if such enforcement proceedings occur after termination
18 of this action.

19 I hereby appoint _____, [print or type full name] of _____
20 _____ [print or type full address and telephone number] as my
21 California agent for service of process in connection with this action or any proceedings
22 related to enforcement of this Stipulated Protective Order.

23 Date: _____

24 City and State where sworn and signed: _____

25 Printed name: _____
26 [printed name]

27 Signature: _____
28 [signature]